

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ACADEMY OF MOTION PICTURE ARTS  
AND SCIENCES, a California nonprofit  
corporation,

Plaintiff,

v.

JAMES DUNNE, an individual; EDGARD G.  
FRANCISCO, an individual; and DOES 1  
through 10,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT FOR:

(1) COPYRIGHT INFRINGEMENT;  
(2) CONVERSION;  
(3) WASHINGTON CONSUMER  
PROTECTION ACT CLAIM; AND

DEMAND FOR JURY TRIAL

Plaintiff Academy of Motion Picture Arts and Sciences (the "Academy"), a California non-profit corporation, brings this action against defendants James Dunne ("Dunne") and Edgard G. Francisco ("Francisco") for injunctive relief and damages resulting from defendants' infringement of the Academy's copyrighted ©"Oscar"® statuette through the sale of an unauthorized, counterfeit copy or, in the alternative, for conversion based on the sale and purported destruction of the Academy's stolen property, and alleges as follows:

**Nature of the Action**

1. This action concerns the sale of an ©"Oscar"® statuette that was either a genuine statuette lost to theft or a very convincing counterfeit. In September 2012, Dunne offered for sale on eBay an ©"Oscar"® statuette described as containing markings, including a serial number, identical to a stolen ©"Oscar"® statuette owned by the Academy (the  
COMPLAINT FOR (1) COPYRIGHT INFRINGEMENT; (2)  
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DEMAND FOR JURY TRIAL - 1

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1 “Statuette”). That eBay listing was removed before any sale was completed. Upon information  
2 and belief, the Academy alleges that Dunne took the listing down fearing that the Academy  
3 might learn of it. Dunne then sold the Statuette to Francisco for \$25,000. Following his  
4 purchase, Francisco claimed the Statuette was counterfeit, demanded a \$15,000 refund, and  
5 purportedly threw the Statuette out.

6 2. If the Statuette was a counterfeit, defendants have infringed the Academy’s  
7 copyright in the ©“Oscar”® statuette by selling and distributing a counterfeit statuette. If the  
8 Statuette was authentic, defendants have committed conversion by asserting dominion over the  
9 Academy’s property and interfering with the Academy’s right to possession of its property.

10 3. Defendants’ misconduct was willful and has caused damage to the Academy.  
11 The Academy is therefore entitled to injunctive relief to restrain defendants from further  
12 infringement of the ©“Oscar”® statuette and other acts of wrongdoing, as well as an award of  
13 actual damages for conversion or copyright infringement or, if an infringement occurred, at the  
14 Academy’s election, statutory damages for willful infringement, together with its costs and  
15 attorneys’ fees.

#### 16 **Jurisdiction and Venue**

17 4. This action arises under the copyright laws of the United States, Title 17, United  
18 States Code. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).  
19 In the alternative, the Court has diversity jurisdiction under 28 U.S.C. § 1332.

20 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a  
21 substantial part of the events and omissions giving rise to the claims herein occurred in this  
22 District.

#### 23 **The Parties**

24 6. Plaintiff Academy of Motion Picture Arts and Sciences is a nonprofit  
25 corporation organized under the laws of the State of California, with its principal place of  
26 business in Beverly Hills, California.

7. The Academy is informed and believes, and on that basis alleges, that defendant Dunne is an individual who resides in Snohomish County, Washington.

8. The Academy is informed and believes, and on that basis alleges, that defendant Francisco is an individual who resides in Hillsborough County, Florida.

9. The identities of the various Doe defendants are not currently known, and this Complaint will be further amended to include the names of such individuals or entities when the same is ascertained.

### **Factual Background**

#### **The Academy's Copyrighted ©"Oscar"® Statuette**

10. The Academy was founded in 1927 by a group of 36 film industry leaders, who numbered among them Cecil B. DeMille, Mary Pickford, Jack Warner and Douglas Fairbanks, for the purpose of advancing the motion picture arts and sciences by promoting cultural, educational and technological achievements. As an incentive for members of the industry to strive toward that goal and as a means of recognizing persons who make outstanding contributions in their respective creative fields, the Academy presents annual "Awards of Merit," known to the public as "Academy Awards" or "Oscars."

11. The Academy has registered the ©"Oscar"® statuette as a work of art with the Copyright Office of the United States of America. A copy of the Certificate of Registration, No. G 38512, is attached as Exhibit A and, by this reference, is incorporated herein as though set forth at length. The Academy has renewed the registration of its copyright in the ©"Oscar"® statuette. A copy of the Certificate of Registration of a Claim for Renewal of Copyright, No. R 443432, is attached as Exhibit B and, by this reference, is incorporated herein as though set forth at length. The Academy's copyright on the ©"Oscar"® statuette is valid and subsisting.

12. Winners of the Academy Award of Merit are given copies of the ©"Oscar"® statuette in recognition of their achievements in motion picture making. The copies of the ©"Oscar"® statuette are given subject to certain restrictions, including prohibitions against the

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1 sale, transfer, or copying of the statuette. The Academy does not distribute, or offer to  
2 distribute, copies of the ©“Oscar”® statuette to the public.

3 13. When the Academy has commissioned the production of ©“Oscar”® statuettes,  
4 such production has always been performed exclusively for the Academy. Manufacturers are  
5 not permitted to copy the statuette for delivery to any other person or entity.

6 **©“Oscar”® Statuette Numbered 1928 Was Stolen**

7 14. In 1979, the Academy engaged Dodge Trophy & Awards Co. (“Dodge Trophy”)  
8 to manufacture ©“Oscar”® statuettes to be given to winners of the Academy’s annual Awards  
9 of Merit. Each ©“Oscar”® statuette was assigned a unique number. At the 1979 Academy  
10 Awards, Oscar number 1928 was awarded to Aaron Rochin for his sound work on the film  
11 “The Deer Hunter.”

12 15. Oscar number 1928 was returned to the Academy by Mr. Rochin because it was  
13 blemished. The Academy replaced Mr. Rochin’s ©“Oscar”® statuette with a new one and  
14 returned the original to Dodge Trophy for repair. The original 1928 remained at Dodge Trophy  
15 until it was stolen from the Dodge Trophy facilities.

16 **Defendants’ Possession of ©“Oscar”® Statuette Numbered 1928**

17 16. In September 2012, Dunne offered for sale on the auction Web site eBay  
18 ([www.ebay.com](http://www.ebay.com)) an item described by Dunne as “Rare Pre-1950 Academy of Motion Picture  
19 Arts and Sciences OSCAR Statue Award!” He described it as bearing identification number  
20 1928. A true and correct copy of the eBay listing is attached as Exhibit C and, by this  
21 reference, is incorporated herein as though set forth at length. The eBay listing was ended  
22 prematurely before a sale was completed. The Academy is informed and believes that Dunne  
23 ended the auction fearing that the Academy would discover it.

24 17. Following the cancellation of the eBay auction, Dunne privately sold the  
25 Statuette to Francisco for \$25,000.

26 18. Upon learning of the sale, the Academy contacted Dunne and Francisco.  
27

1           19. Dunne has told the Academy that (i) he acquired the Statuette from a moving  
2 sale and was told that the Statuette had earlier been found in storage units or, (ii) in the  
3 alternative, he received the Statuette from a third-party who had purchased it at an estate sale.  
4 Dunne also claimed that he offered, and willingly gave, Francisco a *full* refund on his purchase  
5 price of the Statuette upon being told by Francisco that the Statuette was counterfeit. Dunne  
6 purportedly did so notwithstanding his contention that before Francisco purchased the Statuette,  
7 he had affirmatively stated it might not be authentic and was told by Francisco that he was  
8 willing to "take a chance" on the purchase.

9           20. Francisco claimed that the Statuette was a counterfeit ©"Oscar"® statuette and,  
10 upon realizing this, asked Dunne for a *partial* refund and discarded the Statuette. Francisco has  
11 claimed that he did so only after asking (i) an ©"Oscar"® collector to compare ©"Oscar"®  
12 No. 1928 with an authentic ©"Oscar"® or, in the alternative, (ii) an appraiser to inspect it.

13           21. The notion that an ©"Oscar"® "collector" exists and that Francisco was aware  
14 of such a person and able to contact him or her regarding the Statuette is remarkable. Almost  
15 all ©"Oscar"® statuettes are subject to a right-of-first-refusal agreement, giving the Academy  
16 the right to repurchase any statuette offered for sale for \$1 to \$10. Since 1950, the Academy  
17 has attempted to purchase any ©"Oscar"® statuette not subject to the right-of-first-refusal  
18 agreement to the extent they were offered for sale. In some instances, Academy members have  
19 purchased them and returned them to the Academy. The Academy has also invoked its first  
20 refusal rights with respect to ©"Oscar"® statuettes subject to the right-of-first-refusal that were  
21 nevertheless offered for sale. Therefore, the vast majority of ©"Oscar"® statuettes reside with  
22 the Academy Award winners, their heirs, or the Academy.

23           22. Neither Dunne nor Francisco has been willing to share their written  
24 communications between each other with the Academy. They refused to share such  
25 communications notwithstanding repeated warnings that such information would be fully  
26 discoverable and that the Academy would have no choice but to file suit if they continued to  
27

1 withhold it. Francisco has further been unwilling to identify the alleged ©“Oscar”® collector  
2 or appraiser upon whose advice he purportedly relied.

3 **FIRST CAUSE OF ACTION**

4 **(Copyright Infringement Against Dunne and Does 1-5)**

5 23. The Academy re-alleges and incorporates by reference the allegations contained  
6 in paragraphs 1 through 22, above, as though fully set forth herein.

7 24. The ©“Oscar”® statuette is wholly original, fixed in a tangible means of  
8 expression and consists of copyrightable subject matter. The Academy has registered and  
9 renewed its claim of copyright in the ©“Oscar”® statuette.

10 25. The Academy is the exclusive copyright holder in the ©“Oscar”® statuette.

11 26. At no time has the Academy authorized defendants to distribute any copy of its  
12 famous copyrighted statuette.

13 27. By reason of defendants’ infringement, the Academy has sustained, and will  
14 continue to sustain, substantial injury, loss and damage to its ownership rights in the  
15 copyrighted work.

16 28. Further, the Academy is entitled to an injunction restraining defendants, their  
17 officers, directors, agents, employees, representatives and all persons acting in concert with  
18 them, from engaging in further such acts of copyright infringement.

19 29. The Academy is further entitled to recover from defendants the damages it has  
20 sustained as a result of defendants’ acts of copyright infringement. The Academy is, at present,  
21 unable to ascertain the full extent of the monetary damage it has suffered by reason of  
22 defendants’ acts of copyright infringement, but the Academy is informed and believes, and on  
23 that basis alleges, that it has sustained damages and is entitled to recover its damages and  
24 statutory damages for willful infringement, together with its costs and reasonable attorneys’  
25 fees.

**SECOND CAUSE OF ACTION**

**(Conversion Against All Defendants)**

30. The Academy re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 29, above, as though fully set forth herein.

31. Following the return of the ©“Oscar”® statuette No. 1928 to the Academy by Aaron Rochin, the Academy held exclusive ownership of the Statuette and the exclusive right to possess the Statuette.

32. Defendants each possessed the Statuette and assumed control and ownership of the Statuette and applied the Statuette to defendants’ own use. Defendants used the Statuette by displaying it, offering it for sale, selling it, and/or destroying it.

33. Defendants’ conversion of the Academy’s property has caused the Academy damages in an amount to be determined at trial, but no less than the market value of the Statuette which is a sum no less than \$25,000. The Academy is informed and believes, and thereupon alleges, that if the Statuette’s authenticity had been confirmed and that if Dunne could have conveyed clear title, the Statuette’s value would have exceeded \$75,000.

**THIRD CAUSE OF ACTION**

**(Violation of the Washington Consumer Protection Act, RCW 19.86.020 Against Dunne and Does 1-5)**

34. The Academy re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 33, above, as though fully set forth herein.

35. Dunne committed an unfair and deceptive act in trade and commerce when he offered the Statuette for sale on Ebay describing it as “Rare Pre-1950 Academy of Motion Picture Arts and Sciences OSCAR Statue Award!” and later sold the Statuette in a private sale for \$25,000. The Statuette either was not his lawful property and/or infringed on the Academy’s copyright.

36. Dunne’s actions have the capacity to materially deceive a substantial portion of the public because he represented to the public that that Statuette was genuine and authorized

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1 for sale. His actions also violate the U.S. Copyright Act, a statute that has a public interest  
2 impact.

3 37. Dunne's unfair and deceptive act has injured the Academy in its business and  
4 property. Dunne's unauthorized sale both devalues genuine OSCAR statuettes and undermines  
5 the reputation and goodwill of the Academy. Dunne's act also deprived the Academy of its  
6 property and/or intellectual property rights.

7 38. There is a causal link between Dunne's unfair and deceptive act and the injury  
8 the Academy has suffered because Dunne offered the Statuette for sale without the Academy's  
9 authorization and with disregard for its reputation and copyright rights. Dunne has been  
10 unjustly enriched by the sale of property that does not belong to him and/or infringes the  
11 Academy's copyright while at the same time impairing the Academy's ability to control its own  
12 goodwill and property.

13 39. Dunne's unfair and deceptive act has caused the Academy damages in an  
14 amount to be determined at trial. The Academy is, at present, unable to ascertain the full extent  
15 of the monetary damage it has suffered by reason of Dunne's act, but the Academy is informed  
16 and believes, and on that basis alleges, that it has sustained damages and is entitled to recover  
17 its damages, together with its costs and reasonable attorneys' fees.

### 18 **PRAYER FOR RELIEF**

19 Wherefore, the Academy prays for a judgment in its favor and against defendants as  
20 follows:

21 1. For a permanent injunction enjoining and restraining defendants and all persons  
22 acting in concert with them from manufacturing, reproducing, distributing, adapting,  
23 displaying, exhibiting, offering for sale, and/or selling an ©"Oscar"® statuette or any statuette  
24 confusingly similar to an ©"Oscar"® statuette;

25 2. For the reasonable value of the converted Statuette in a sum not less than  
26 \$25,000;

27  
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3. For actual damages or statutory damages for willful copyright infringement in an amount to be determined at trial;

4. For damages for the unfair and deceptive act;

5. For pre-and post-judgment interest at the legal rate;

6. For the Academy's costs and attorneys' fees incurred herein as allowed by law;

and

7. For such other and further relief as the Court deems just and proper.

DATED: November 16, 2012

LANE POWELL PC

By /s/ Tiffany Scott Connors  
Tiffany Scott Connors, WSBA No. 41740  
Attorneys for Plaintiff Academy of Motion Picture  
Arts and Science

**DEMAND FOR A JURY TRIAL**

Plaintiff hereby demands a trial by jury.

DATED: November 16, 2012

LANE POWELL PC

By /s/Tiffany Scott Connors

Tiffany Scott Connors, WSBA No. 41740  
Attorneys for Plaintiff Academy of Motion Picture  
Arts and Science

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**EXHIBIT A**  
to Complaint of Academy  
of Motion Pictures v James Dunne

CLASS G unp.No. 38512

Copyright Office  
Of the United States of America  
THE LIBRARY OF CONGRESS  
\* \* \* WASHINGTON \* \* \*

*Certificate of Copyright Registration*

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, as amended by the Act approved March 2, 1913, that a photograph or other identifying reproduction of the

work of art - sculpture

named herein has been deposited in this Office, under the provision of the Act of 1909, and that registration of a claim to copyright for the first term of twenty-eight years has been duly made in the name of

Academy of Motion Picture Arts and Sciences,

1201 Taft Bldg.,

Los Angeles, Calif.

Title: Academy of Motion Picture Arts and Sciences First

Award. (A modernistic "gold knight" ....)

Author of United States. (2 views)

Copy received Sept. 2, 1941

Entry: Class G., unp., No. 38512

[SEAL]

*C. A. Rowe*  
Register of Copyrights.

**EXHIBIT B**  
to Complaint of Academy  
of Motion Pictures v James Dunne

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# Certificate of Registration of a Claim to Renewal Copyright

FORM R

REGISTRATION NO.

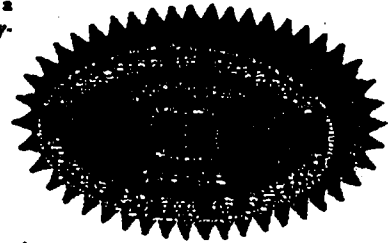
R 443432

DO NOT WRITE HERE

This is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

*Abraham L. Kaminstein*

Register of Copyrights  
United States of America



## 1. Renewal Claimant(s), Address(es), and Statement of Claim:

(a) Name Academy of Motion Picture Arts and Sciences

Address 9038 Melrose Avenue, Los Angeles, California

Claiming as Proprietor of copyright in a work made for hire

(b) Name \_\_\_\_\_

Address \_\_\_\_\_

Claiming as \_\_\_\_\_

(c) Name \_\_\_\_\_

Address \_\_\_\_\_

Claiming as \_\_\_\_\_

## 2. (a) Title:

Academy of Motion Picture Arts and Sciences First Award

A modernistic gold knight mounted on a pedestal - known as OSCAR

(b) Renewable Matter:

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol. \_\_\_\_\_; No. \_\_\_\_\_; Issue \_\_\_\_\_; Date \_\_\_\_\_

## 3. Authors of Renewable Matter:

Academy of Motion Picture Arts and Sciences

## 4. Facts of Original Registration:

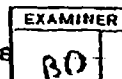
Original registration number: Class G; No. 38512

If registered as published, give date of publication \_\_\_\_\_

If registered as unpublished, give date of registration September 2, 1941

Original copyright claimant Academy of Motion Picture Arts and Sciences

Complete all applicable spaces on next page



**EXHIBIT C**  
to Complaint of Academy  
of Motion Pictures v James Dunne



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[See suggestions](#)LIFE OF EMILE ZOLA  
MOVIE POSTER-Paul...**\$995.00**[See suggestions](#)(26) "2000-2012" -  
Official & Rare...**\$650.00**

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Original 1-Sheet Mov...**\$9.99**[See suggestions](#)Academy Awards  
program Official 84th...**\$19.99**[See suggestions](#)

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Art Glass Swirl Award

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personalized art plate kit

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at chasing fireflies

Rare Pre-1950 Academy of Motion Picture Arts And  
Sciences OSCAR Statue Award!


Seller: **tullaberrywine** (9167 ★) 99.8% Positive feedback[Save this seller](#) | [See other items](#)

Item condition: —

Ended: Sep 29, 2012 20:23:28 PDT

Starting bid: **US \$9.99** { 0 bids }Price: **US \$25,000.00**[Add to list](#)Shipping: **\$12.77** Economy Shipping | [See details](#)

Item location: Stanwood, Wa, United States

Ships to: Worldwide

Delivery: Estimated within 3-9 business days

Payments: **PayPal** | [See details](#)Returns: 14 days money back, buyer pays return shipping | [Read details](#)



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Description

Shipping and payments

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Item number: 130775323985

Seller assumes all responsibility for this listing.

#### Item specifics

Country of Manufacture: United States

Found by a Friend in Hollywood comes this unbelievably rare and impossible to find EARLY, (definitely pre-1950), Oscar award statuette from the Academy of Motion Picture Arts and Sciences! This one was made by Dodge Inc. Trophies. Dodge made the Academy Award statue from 1929, to 1982. This one is undedicated. Since I was not around when this award was made, I am not 100 percent certain about it's total authenticity. I will say that most of the earmarks point to it being the real deal. A movie memorabilia collector offered the previous owner over \$4,000.00 for it, but, he turned it down. This Oscar looks to be a gold plated pewter type metal I believe. Total height of 13" tall, with a weight of 6 pounds, 10 ounces. About 1/2" shorter than it's contemporary statue, and almost 2 pounds lighter. The modern Oscar statues have a heavier marble base, while this one has a partially hollow metal base. There are plenty of scuffs, but no repairs or damage can be found. The upper brass plate reads "Academy of Motion Picture Arts And Sciences". The lower tag reads "Manufactured Under World Rights Granted By Academy of Motion Picture Arts & Sciences To Dodge Inc. Trophies-Los Angeles, California". The foot, or place where the Oscar stands is a 5 hole film reel marked "A.M.P.A.S. 1928".

#### Questions and answers about this item

No questions or answers have been posted about this item.

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